

Attorney Docket No.: C6664(C)
Serial No.: 10/748,946
Filed: December 29, 2003
Confirmation No.: 7892

RESPONSE

Sir:

The following comments are in response to the Office Action dated March 23, 2006. These comments are intended to advance the case to issue without delay.

The Commissioner is hereby authorized to charge any additional fees, which may be required to our deposit account No. 12-1155, including all required fees under: 37 C.F.R. §1.16; 37 C.F.R. §1.17; 37 C.F.R. §1.18.

Claims 11, 20-21, 23 and 27-28 were rejected under 35 U.S.C. § 102(b) as anticipated by Heydarpour et al. (U.S. Patent 5,843,540). Applicant traverses this rejection.

Independent claim 11 from which all other claims depend recites a middle layer. This layer must comprise at least 25% by weight of post-consumer recycled resin. The Examiner cites Heydarpour et al. as disclosing a container that is recyclable and used by a consumer. See column 1, lines 19-20 and 34. Based on this disclosure the Examiner leaps to the conclusion that the reference discloses a container which is formed of recycled post consumer resin, and moreover that a middle layer of that container comprises 100% recycled post consumer resin.

Applicant respectfully submits that the Examiner describes something which goes way beyond any disclosure. Under the Background to the Invention, Heydarpour et al. merely observes that polyethylene pouches have an ecological advantage, one of which is that the pouch is recyclable. Lacking is any disclosure that a recycled pouch would be utilized as feedstock for any newly manufactured pouch or bottle. For instance, the present assignee is a major purchaser of polyethylene bottles for packaging laundry detergent (i.e. Wisk® and all® brands). The company has for many years pursued a recycling program for used polyethylene bottles. Most of these bottles are collected for remolding as construction material and donated to the U.S. National Park Service. See the attached article of December 1997. These efforts have continued till the present. Thus, the presumption that recycled material re-enters into new bottle manufacture has no basis in the reference.

Another feature of claim 1 is the requirement that any post-consumer recycled resin comprise at least 25% by weight of the middle layer and be placed therein. Nothing in the reference teaches or suggests that the recycled resin be placed in a middle layer of a bottle wall construction. Neither is there any disclosure that at least 25% of that middle layer be formed of the recycled resin. For all of the above reasons, Heydarpour et al. would not anticipate the claims.

Claims 14-16 were rejected under 35 U.S.C. § 103(a) as unpatentable over Heydarpour et al. (U.S. Patent 5,843,540) in view of D'Alessandro (U.S. Patent 4,068,663). Applicant traverses this rejection.

Fundamental to the present invention is that the claimed bottle has walls sufficiently clear for a consumer to visibly see liquid contents in the bottle. Often the liquid contents are colored. This adds to the aesthetic appeal. Also color provides a cue to a particular variant of the detergent or other liquid being purchased.

Not only must the bottle be transparent or translucent, but it must be sufficiently strong to withstand rugged handling. Strength has been provided through use of virgin resins. These resins are particularly effective in the outer and, to a lesser extent, in the innermost layers of the bottle wall. An assist to transparency/translucency is provided by use of a metallocene polyethylene virgin polymer in the outer layer. Metallocene polyethylene virgin polymer while providing light transmittance still needs to be strengthened.

Post-consumer recycled resins are known to impart strength. What was surprising to applicant was that recycled resin placed in a middle layer, and in relatively large amount would not substantially interfere with light transmittance. Claim 11 recites that the outer and inner layers are each no thicker than 20% of the total wall thickness. This leaves at least 60% wall thickness for the middle layer. Post-consumer recycled resin is claimed to be at least 25% by weight of the middle layer. This amount of post-consumer recycled resin is indeed a very substantial constituent of the wall.

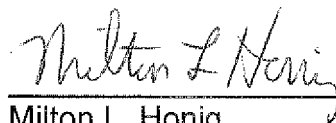
Intuitively the skilled technician would be hesitant to incorporate any significant amount of recycled resin. This resin is not known to have any appreciable light transmittance. Post-recycled plastics are mixtures of many materials and subject to impurities which could adversely affect light transmission properties. A good stew can easily be ruined in taste by a rotten onion. The same intuitive concern would be with post-consumer recycled resins.

Yet despite the potential (and likely presence) of transmittance adverse components, applicant found that post-consumer recycled resins even in large amount would not interfere with the transparency/translucency of the bottle. Apparently the metallocene polyethylene polymer in the multi layer arrangement works well as an outer layer insuring viewability despite combination with the much larger middle layer.

Heydarpour et al. indicates that polyethylene pouches can be recycled. The common understanding of "recycling" simply means re-use rather than burying as a landfill or incineration. Recycled plastics have a variety of uses. None of these are necessarily or even generally a return to the first type of manufactured article. Nothing in Heydarpour et al. suggests that used pouches be recycled into new pouches. Although there is such a possibility, the skilled technician seeking to produce a transparent or translucent bottle would likely avoid recycled material. Transparency or translucency is not readily achieved with any type of polyethylene. Recycled plastics are more than likely to contain the "wrong" type of polyethylene. One would intuitively avoid feedstock other than virgin material. In the present invention, applicant has gone against the conventional wisdom. Relatively less expensive post-consumer recycled resin can be utilized, so long as the resin is placed in a middle layer. This concept is unobvious and the results surprising. D'Alessandro does not remedy the basic deficiencies of Heydarpour et al. For all of the above reasons, claims 14-16 would not be found obvious in light of the references.

In view of the foregoing comments, applicant requests the Examiner to reconsider the rejection and now allow the claims.

Respectfully submitted,



Milton L. Honig
Registration No. 28,617
Attorney for Applicant(s)

MLH/sm
(201) 894-2403

Lever Joins In Yellowstone National Park's 125th Anniversary Celebration

On August 17, at the first of two Yellowstone National Park 125th anniversary celebrations, Lever's COO and Executive Vice President John Rice (who, since the October 1 reorganization, is EVP and COO of the Chesebrough-Pond's Business Unit) was honored on behalf of Lever, as a modern-day protector of Yellowstone, the world's first national park. Rice was commended, along with Melinda Sweet, Lever's Senior Vice President, Law, for Lever's ongoing "Recycling at Work" program, which is considered a model program, representing the best in public/private partnerships.

Vice President Al Gore, U.S. Interior Secretary Bruce Babbitt and National Park Service Director Bob Stanton were on hand for the ceremony, which recognized the seemingly timeless natural beauty and thriving eco-system of Yellowstone, as well as paid tribute to our national parks.

On August 25, at a second commemorative event at Old Faithful – the best known geyser in the Park – Wyoming senators and its governor, along with the governor of Idaho, paid tribute to Yellowstone, which occupies parts of Idaho, Montana and Wyoming. At the event, Senator Thomas of Wyoming talked with Bill Schrader, Lever's then Director of ECR and Sales Operations, and a member of Lever's Environmental Task Force, and Lara Wyss, Lever's then Manager of Environmental Affairs, about Lever's recycling program, and expressed the need for other private partners to follow Lever's example.

As part of Lever's "Recycling at Work" program, Lever has donated 100 percent recycled plastic lumber, enabling Yellowstone to replace more than 45,000 square feet of boardwalk immediately

around Old Faithful and the adjacent geo-thermal areas. Lever has received two prestigious awards specifically for its "Recycling at Work" projects at Yellowstone.

As part of the 125th anniversary tribute,

John Rice pledged to "work toward completing the replacement of the old boardwalk system around the Old Faithful geyser area with sustainable, recycled plastic lumber."

Forty national parks have benefited from donations from Lever's "Recycling at Work" program, in which more than ten million plastic detergent containers have been recycled into 100 percent plastic lumber to create necessary park amenities, such as benches, boardwalks and picnic tables. In four years, Lever's commitment to this program has equaled \$1 million in donations and promotional support. ★



Vice President Al Gore addresses the crowd at Yellowstone National Park's 125th Anniversary Celebrations.



John Rice applauds the partnership between Lever and Yellowstone National Park which has recycled ten boardwalks throughout the park.



Bill Schrader and Wyoming Senator Craig Thomas at Yellowstone National Park, which has benefited from Lever's "Recycling at Work" program.